

Office of Chief Counsel
Internal Revenue Service
memorandum
CC:NER:MAN:TL-N-3442-99

date:

to: District Director, Manhattan District
ATTN: Chief, Examination Division
(Revenue Agent Mark Schips)

from: District Counsel, Manhattan (CC:NER:MAN)

subject:

Fiscal Year: [REDACTED] (Form 1120-F)
Consent to Extend the Statute of Limitations on Assessment
STATUTE OF LIMITATIONS EXPIRES [REDACTED]

UIL No. 6501.08-09

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INTRODUCTION

We have been asked for advice regarding the individuals who may execute a consent to extend the statute of limitations on assessment on behalf of the above-referenced taxpayer.

FACTS

The Manhattan District is currently conducting an examination of [REDACTED] (" [REDACTED] ") (E.I.N. [REDACTED]) for income tax for the fiscal year ended March 31, [REDACTED]. A consent to extend the statute of limitations on assessment for [REDACTED] for income tax for the fiscal year ended March 31, [REDACTED], is currently being sought.

Prior to [REDACTED], [REDACTED]'s office in the United States was a Branch Office and [REDACTED] was its General Manager and Chief Representative. [REDACTED] signed the [REDACTED] Form 1120-F for fiscal year ended March 31, [REDACTED]. In [REDACTED], the Branch Office of the [REDACTED] became a Representative Office. [REDACTED] remained with the office as its Chief Representative until [REDACTED] when he went back to [REDACTED]. [REDACTED]'s replacement as Chief Representative is [REDACTED]. [REDACTED]'s Form 1120-F for fiscal year ended March 31, [REDACTED] is not due until [REDACTED]. Hence, the revenue agent cannot determine whether the head office in [REDACTED] has authorized [REDACTED] to sign Form 1120-F for the [REDACTED].

The Revenue Agent has secured two consents to extend the statute of limitations on assessment for fiscal year ended March 31, [REDACTED]. However, both consents may not be valid. The first consent was signed by [REDACTED] an Assistant Representative, on [REDACTED]. Based on the investigation to date, it does not appear that [REDACTED] has been authorized to sign tax documents on behalf of [REDACTED] as there is no evidence that such authority has been delegated by the head office to [REDACTED].

The second consent was signed by [REDACTED] on [REDACTED]. However, due to a typographical error on the front page, taxable year [REDACTED] was the period indicated rather than [REDACTED]. On [REDACTED], [REDACTED] also signed a Power of Attorney on behalf of [REDACTED] authorizing [REDACTED] to act on [REDACTED]'s behalf.

ISSUES

1. Who is the proper party to sign the consent to extend the statute of limitations on assessment for [REDACTED]?
2. Whether the Power of Attorney signed by [REDACTED] on behalf of [REDACTED] authorizing [REDACTED] to act on its behalf is valid.
3. Whether I.R.C. § 882(f) applies, and thereby, allowing an agent of [REDACTED] to sign the consent to extend the statute of limitations on assessment on its behalf.

LEGAL DISCUSSION

Issue 1

Who is the proper party to sign the consent to extend the statute of limitations on assessment for [REDACTED] [REDACTED]?

Under I.R.C. § 6501(c)(4), the Service and a taxpayer may consent in writing to an extension of the time for making an assessment if the consent is executed before the expiration of the normal period of assessment, or before the extension date agreed upon in a prior extension agreement between the parties. In order to extend the period for assessment in the case of a corporate return, a Form 872 must be executed.

Pursuant to I.R.C. § 6061, any return, statement, or other document made under any internal revenue law must be signed in accordance with the applicable forms or regulations. However, the regulations under I.R.C. § 6501(c)(4) do not specify who may sign consents executed under this section. Accordingly, the Service will apply the rules applicable to the execution of returns to the execution of consents to extend the statute of limitations on assessment. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

In the case of corporate returns, I.R.C. § 6062 provides that a corporation's income tax return shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. Hence, under the provisions of Treas. Reg. § 1.6062-1, returns that are required to be made by corporations under the provisions of subtitle A or subtitle F of the Internal Revenue Code with respect to any tax imposed by subtitle A (which includes corporate income taxes) shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to sign such returns.

The Assistant Representative, [REDACTED], and the Chief Representative of the Representative Office of [REDACTED], [REDACTED], are not one of the officers set forth in the regulations as having the authority to sign a return. Hence, they may not sign either the return or the consent to extend the statute of limitations on assessment unless an officer or officers duly authorized to act on behalf of [REDACTED] grants such authority to them. [REDACTED], the former General Manager and Chief Representative had signed the Form 1120F for fiscal year ended [REDACTED], which is prima facie evidence that he was authorized to sign a consent to extend the statute of limitations on assessment on behalf of the [REDACTED]. Treas. Reg. § 1.6061-1(c).

An officer or officers duly authorized to act on behalf of a corporation may grant their authority to extend the statute of limitations on assessment on behalf of the corporation to a full-time employee or employees of the corporation. See Treasury

Department Circular 230, 31 C.F.R. § 10.7(c)(1)(iv), 1966-1 C.B. 1171.

Such a grant of authority must be enumerated in a power of attorney, which must set forth, in relevant part, (1) the name and mailing address of the taxpayer; (2) tax identification number of the taxpayer; (3) name and mailing address of the recognized representative(s); (4) description of the matter(s) for which representation is authorized which, if applicable, must include the type of tax involved, the federal tax form number, and the specific year(s)/period(s) involved; and (5) a clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s). Treas. Reg. § 601.503(a). In addition, a full-time employee or employees appointed under such a power of attorney must make a written declaration in conformity with Treas. Reg. § 601.502(c). The requirements of Treas. Reg. §§ 601.502(c) and 601.503(a) are satisfied by a properly completed Form 2848-Power of Attorney and Declaration of Representative. Treas. Reg. § 601.503(b)(1).

Issue 2

Whether the Power of Attorney signed by [REDACTED] on behalf of [REDACTED] authorizing [REDACTED] to act on its behalf is valid.

On [REDACTED], [REDACTED] signed a Power of Attorney on behalf of [REDACTED] presumably authorizing [REDACTED] to act on [REDACTED]'s behalf. [REDACTED] listed his title as Chief Representative and General Manager. However, there is a question as to whether the Power of Attorney is valid.

While [REDACTED] had signed the fiscal year ended March 31, [REDACTED] Form 1120F for [REDACTED], he could no longer have been the General Manager in [REDACTED] because a Representative Office does not have a General Manager. Since there is a question as to whether the Power of Attorney is valid, we do not recommend that the revenue agent seek the signature of the alleged Power of Attorney, [REDACTED] on the consent to extend the statute of limitations on assessment. Furthermore, we recommend that the revenue agent obtain a new Power of Attorney signed by the person to whom the authorization is delegated as discussed above in issue 1.

Issue 3

Whether I.R.C. § 882(f) applies, and thereby, allowing an agent of [REDACTED] to sign the consent to extend the statute of limitations on assessment on its behalf.

Rather than having to request that an officer or officers of [REDACTED] that are authorized to sign a return under Treas. Reg. § 1.6062-1 to delegate their authority to [REDACTED], the revenue agent inquired as to whether I.R.C. § 882(f) would apply in this case so as to allow an agent of [REDACTED] to sign the consent to extend the statute of limitations on assessment. Under I.R.C. § 882(f),

If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return required under section 6012 shall be made by the agent.

The [REDACTED] has a Representative Office in the United States. Accordingly, it has an office and I.R.C. § 882(f) does not apply.

Conclusion

We recommend that the Revenue Agent request that an officer or officers duly authorized to act on behalf of [REDACTED] either sign the consent to extend the statute of limitations on assessment or grant their authority to sign returns and consents to extend the statute of limitations on assessment to [REDACTED]. Furthermore, we recommend that a new Power of Attorney for [REDACTED] be signed by either the officer or officers duly authorized to act on behalf of [REDACTED] or [REDACTED] once the authority to handle the tax matters has been delegated to him.

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Should you have any questions regarding this matter, please contact Paul Schneiderman at (212) 264-5473, extension 290 or Michelle Or at (212) 264-5473, extension 239.

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